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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1952. No. 214.

In the Matter of:

BRIGANTINE BEACH HOTEL CORPORATION,

Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINION OF COURT BELOW.

The opinion of the Court of Appeals is not yet reported.

JURISDICTIONAL STATEMENT.

Jurisdiction to issue the writ is found in provisions of the Act of June 25, 1948, C 646, 62 Stat. 928; 28 U. S. C. A. Section 1254 (1).

QUESTION PRESENTED.

The question involved is whether the filing of an appeal in an interlocutory order (the amount of fees allowed) divests, while said appeal is pending, the District Court from all jurisdiction in the administration of an estate in bankruptcy under Chapter XI.

STATEMENT OF FACTS.

On October 5, 1951, the District Court entered an order awarding fees and expenses to the Receiver and others and directed the debtor under the Chapter XI Proceedings to

deposit the fund in Court, in order to carry out the debtor's plan of arrangement. From several of these awards, debtor took an appeal.

While the appeal was pending, the District Court, after hearing, determined that the plan was not fair, equitable and feasible and the District Court entered an order adjudicating the debtor a bankrupt.

The Court of Appeals for the Third Circuit affirmed the District Court in the order adjudicating the debtor and subsequently denied a rehearing.

SUMMARY OF ARGUMENT.

The Court of Appeals did not err in affirming the order of the District Court adjudicating debtor a bankrupt. The question on appeal from the allowance of fees and expenses was not of such a fundamental question as to divest the District Court of all jurisdiction to administer the proceedings under Chapter XI.

ARGUMENT.

In re Woodruff (9th Cir.) 1941, 121 Fed. 2d 152, is authority for the statement that allowance of fees were not final judgments but were interlocutory orders only and that consequently the appeal therefrom did not preclude further proceedings in the court below.

To permit an appeal from an interlocutory order such as this on a question not fundamental to the administration of a bankruptcy case would thwart entirely the proper administration of estates in bankruptcy. If such were the case it would defeat the very plan of arrangement proposed and accepted by creditors. Of like import is the case of *Fernow v. Liberty Royalties Corp.* (5th Cir.) 1944, 146 Fed. 2nd 396.

The order appealed from with respect to fees and expenses in no wise impinged upon the jurisdiction of the District Court. Had the order appealed from been affirmed or denied, the plan of reorganization still had to be confirmed or denied. Merely allowing the estate to lie dormant pending an appeal on the question of fees and expenses would be an injustice rather than doing justice. The order of adjudication did not destroy the validity of the appeal on the order respecting fees. Debtor did not suffer any hardship thereby for it relieved the debtor of making a deposit for fees regardless of what amount was determined, that of the District Court, or the determination later made by the Court of Appeals.

The adjudication was not brought about by reason of the fees allowed, but because the court found the plan of arrangement not to be to the best interest of creditors, fair, equitable, and feasible according to the act.

There is no conflict of opinion. The Courts have repeatedly held that although the basic rule is that on perfecting an appeal the lower court is ousted of jurisdiction, nevertheless the appeal must be on a basic and fundamental issue. The issue here was merely on a minor step in the proceeding.

CONCLUSION.

It is submitted that there is no conflict but the law is settled, that an appeal filed on a minor issue will not divest the lower court of jurisdiction. The question raised on an appeal for allowances of fees and costs is a minor issue and as such does not divest the lower court of jurisdiction to determine the fundamental question.

Wherefore, your Respondent prays that the Writ of Certiorari requested in the petition be denied.

Respectfully submitted,

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